

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5174 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

HARSUKHBHAI HANSARAJBHAI KACHHADIYA

Versus

UNION OF INDIA

Appearance:

MR HARIN P RAVAL for Petitioner
Mr. Sunil C Patel for the respondent no. 1.
Mr. A.J.Desai, ASSISTANT GOVERNMENT PLEADER
for respondent nos. 2 and 3.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 15/10/97

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of his detention order dated June 27,1997 at Annexure "A" to the petition.

2. The District Collector and District Magistrate, Junagadh, respondent no.3 herein in exercise of the powers conferred by section 3(2) of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short, the Act of 1980) . The order detaining the petitioner on 27.6.97 with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of blue kerosene of Public Distribution System essential to the community. The third respondent also furnished the grounds of detention to the petitioner on the same day, i.e. on 27.6.97. It has been alleged thast under Section 2 of the Essential Commodities Act, Kerosene is an essential commodity and is declared as such under the Essential Commodities Act. Gujarat Essential Commodities (Licensing, Control and Stock Declaration) Order, 1981 has been promulgated and has been in force and similarly, the Central Government has also promulgated Kerosene (Restriction on Use and Fixation of Selling Price) Order, 1993. (For short Order of 1993). Clause-8 of the Order of 1993 provides that for the public distribution scheme, the State Government has got blue kerosene prepared which is different from the imported white kerosene. The petitioner is alleged to have taken and lifted 7200 litres of kerosene from the wholeseller Shri Ratilal Tribhovandas in June, 1997 and that instead of distributing it to the general public under ration cards, he sold it to other purchases who were not ration card holders and thereby indluded in activities prejudicial to the maintenance of supplies of commodity, namely blue kerosene essential to the community. On checking by the inquiry officer at random, the record of the ration card holders of village Ambalia which fell under fair-price shop of village Patrapasar where the petitioner was supplying kerosene and on personal interrogation, written statements were taken wherein 10 ration card holders have stated that they had not received kerosene for the month of May, 1997 and there is no noting in the ration card for distribution of kerosene for the month of May, 1997 in respect of the said 10 ration card holders. Under the facts and circumstances and on the basis of the grounds supplied to the petitioner, the petitioner was detained preventively by the third respondent as aforesaid.

3. I have heard Mr. Prajapati, learned advocate for the petitioner. I have also heard learned AGP Mr. A.J.Desai for the respondent State and Mr. Sunil Patel for the Union of India, respondent no.1 herein. Several points and grounds are urged in the petition against the impugned detention order. Mr.

Prajapati has however relied on the point that there is no subjective satisfaction recorded by the detaining authority that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supplies of essential commodity, i.e. blue kerosene through public distribution scheme, it was necessary to detain the petitioner under section 3(2) of the said Act, inasmuch as the petitioner could have been prevented from the alleged activities prejudicial to the maintenance of supplies of essential commodities by cancelling his licence and thus, adopting an alternative remedy. It is therefore, urged that subjective satisfaction of the detaining authority as formed in the impugned order with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supply of blue kerosene. But in fact, there is no application of mind on the part of the detaining authority that alternative remedy could have been possible to curb such activities prejudicial to the supplies of essential commodities. On perusal of the relevant record, it is stated in ground no.13 that by initiating appropriate action under clause 12-AA of the aforesaid Order of 1980, illegal activities of the petitioner could not have been stopped immediately or effectively. Mr. A.J.Desai, learned AGP has invited my attention to para-10 of the affidavit-in-reply wherein it is inter alia recited that if the decision of cancelling the licence was taken, the petitioner would have continued his illegal activities during the proceedings of cancelling licence and also at the time of Appeal and Revision. However, this aspect is not reflected as a ground in the impugned detention order. The impugned detention order suffers from the vice of non-application of mind and subjective satisfaction of detaining authority is vitiated.

4. In the case of Ganeshbhai Gangabhai Harijan vs. District Magistrate, Banaskantha and others reported in 24(2) GLR, 1016, it is of course, held that it is not necessary that where alternative remedies or possibilities of preventing the petitioners were present, no detention order could have been passed. Instead of launching a prosecution it might become necessary in certain cases to detain the detenu and that might be an efficacious way of preventing him from going with objectionable activities. However, the court must be satisfied that this possibility was very much present before the detaining authority and after taking into consideration and after knowing the pros and cons, the prognosis was arrived at. If this is not done, then clearly detention would be bad because it would be suffering from the vice of non-application of mind. In

the present case, it is not done so. The impugned detention order is therefore, bad because it suffers from the vice of non-application of mind.

5. In the above premises, the impugned detention order cannot be sustained.

6. The petition is therefore allowed. The impugned detention order is quashed and set aside. The petitioner Harsukhbhai Hansrajbhai Kachhadia is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly.

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